

CHAPTER 30.1-30

UNIFORM DURABLE POWER OF ATTORNEY ACT

[Note: Previous Chapter 30.1-30 was repealed and replaced by S.L. 1985, ch. 370]

30.1-30-01. (5-501) Definition. A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal or by lapse of time," or "This power of attorney becomes effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

30.1-30-02. (5-502) Durable power of attorney not affected by disability or lapse of time. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

30.1-30-03. (5-503) Relation of attorney in fact to court-appointed fiduciary.

1. If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.
2. A principal may nominate, by a durable power of attorney, the conservator, guardian of the principal's estate, or guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

30.1-30-04. (5-504) Power of attorney not revoked until notice.

1. The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal's successors in interest.
2. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

30.1-30-05. (5-505) Proof of continuance of durable and other powers of attorney by affidavit. As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that the attorney in fact did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the

nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

30.1-30-06. Gifts under power of attorney. If any power of attorney, durable or otherwise, or other writing authorizes an attorney in fact or other agent to perform any act that the principal might or could do or evidences the principal's intent to give the attorney in fact or agent full power to handle the principal's affairs or deal with the principal's property, the attorney in fact or agent may make gifts. The gifts may be in any amount of any of the principal's property to any individual or to an organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both. Notwithstanding this section, a principal, by express words in the power of attorney or other writing, may authorize, or limit the authority of, any attorney in fact or other agent to make gifts of the principal's property. This section applies to a power of attorney executed before August 1, 1995, as well as a power of attorney executed after July 31, 1995.